

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Charles P. Kocoras	Sitting Judge If Other than Assigned Judge	
CASE NUMBER	02 C 4640	DATE	11/13/2002
CASE TITLE	King et al vs. United States of America		


[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> Local Rule 41.1 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] Ruling held. ENTER MEMORANDUM OPINION: We grant defendant's motion (Doc 3-1) to dismiss without prejudice. The Kings have thirty days to file an amended complaint, specifically identifying any and all legal causes of action.
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	SCT 	courtroom deputy's initials	U.S. DISTRICT COURT CLERK 02 NOV 13 AM 11:43 FILED 10	number of notices	Document Number 9
				NOV 14 2002 date docketed	
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benefits. This action arises from a VA investigation of the Kings with respect to Mr. King's disability. Between January 1996 and November 1998 the VA investigated whether or not Mr. King was working for his wife at her day care business at the same time that he was receiving disability benefits from the government. During this investigation VA agents interviewed employees of Mrs. King's day care business and certain Illinois Department of Children and Family Services ("DCFS") personnel. The VA agents allegedly told those parties that one or both of the Kings had engaged in illegal acts concerning the operation of the day care center. The VA agents allegedly entered the Kings' home and engaged in improper electronic and other surveillance of the Kings without their consent or a court order. Mr. King unsuccessfully tried to retrieve information about the investigation: First, he submitted a Freedom of Information Act ("FOIA") request on the VA's activities, but was denied access to portions of the information. Second, he requested that the VA provide him with his personnel files but those files were either withheld or destroyed.

In November 1988 counsel for the Kings sent a letter to Richard J. Griffin, Inspector General of the VA, informing him that the Kings were making a claim for wrongful actions taken against them during the alleged investigation. The letter contained the following claims: (1) Government employees contacted friends and employees of Mrs. King's day care center and made disparaging remarks about the

Kings; (2) As a result of the investigation, three parents removed their children from the day care center; (3) Mrs. King was forced to explain to the DCFS that she was not engaged in fraud; and (4) Mrs. King and her children were placed under surveillance by the government. The letter claimed the Kings had sustained at least \$50,000 in damages in the form of lost business opportunities and emotional distress. In January 1989 the VA denied the Kings' claims, stating that they were not actionable under the Federal Tort Claims Act (the "FTCA"). The VA further informed them of their right to file suit in federal district court in accordance with the FTCA.

The Kings filed this lawsuit under the FTCA on June 28, 2002. The United States moves to dismiss the action for lack of subject matter jurisdiction, arguing that the Kings' claims are barred by the intentional tort exception to the FTCA's waiver of sovereign immunity.

LEGAL STANDARD

The purpose of a motion to dismiss pursuant to Rule 12(b)(1) is to dismiss claims over which a federal court lacks subject matter jurisdiction. Jurisdiction is the "power to decide" and must be conferred upon a federal court. *In re Chicago, Rock Island & Pac. R.R. Co.*, 794 F.2d 1182, 1188 (7th Cir. 1986). The plaintiff bears the burden of establishing that the jurisdictional requirements have been met. *See Kontos v. United States Dep't of Labor*, 826 F.2d 573, 576 (7th Cir. 1987). When a defendant

moves for dismissal pursuant to Rule 12(b)(1), the plaintiff must support its allegations with competent proof of jurisdictional facts. *See Thomson v. Gaskillwsa*, 315 U.S. 442, 446 (1942). With these principles in mind, we turn to the instant motion.

DISCUSSION

The Kings' complaint alleges a list of factual grievances but fails to identify any legal theories of liability. The factual grievances are the following:


1. VA agents told Mrs. King's day care center employees and DCFS personnel that the Kings engaged in illegal acts concerning the operation of the day care center. Compl. ¶ 6.
2. VA agents entered the Kings' home without their consent. Compl. ¶ 7.
3. VA agents engaged in improper electronic and other surveillance of the Kings without their consent or appropriate court order. Compl. ¶ 8.
4. The Kings's Freedom of Information Act ("FOIA") request for information regarding the VA's investigation of the Kings was denied. Compl. ¶ 9-10.
5. VA agents withheld or denied its personnel files regarding Mr. King. Compl. ¶ 11-12.

In its motion to dismiss, the United States was forced to decipher what causes of action were being asserted. The United States concluded that the Kings were asserting

intentional tort claims for libel, slander, and interference with contract rights, and moved to dismiss them pursuant to 28 U.S.C. § 2680(h). That statute bars actions against the United States for “[a]ny claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, *libel, slander, misrepresentation, deceit, or interference with contract rights . . .*” *Id* (emphasis added). The Kings concede that, to the extent that the complaint asserts claims for libel, slander, and interference with contract rights, it is barred by 28 U.S.C. § 2680(h). *See* Pl. Opp. at 3. The Kings, however, maintain that they have asserted other causes of action that are actionable against the government under the FTCA. It is unclear to us, from either the complaint or the Kings’ opposition brief, what other legal causes of action the Kings are asserting. Therefore, we are unable to determine whether or not they are authorized by the FTCA.

CONCLUSION

Based on the foregoing analysis, we grant the motion to dismiss without prejudice. The Kings have thirty days to file an amended complaint, specifically identifying any and all legal causes of action.



Charles P. Kocoras
Chief Judge
United States District Court

Dated: November 13, 2002